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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,541	01/16/2002	Gavriel Meron	P-3228-US	1799

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EXAMINER

JUNG, WILLIAM C

ART UNIT PAPER NUMBER

3737

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/046,541

Applicant(s)

MERON ET AL.

Examiner

William Jung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-50 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-30 and 36-55 of copending Application No. US 2001/0035902. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: US 2001/0035902 (Iddan et al) disclose the same invention is claims 1-555.

Claims 1, 12, and 28: Iddan et al disclose in claim 1 where a device for an in vivo (which includes body lumen and endoscope) where an optical imaging system is used to image from within the body. Claims 2-11 and 13-25 in current application are disclosed in claims 2-30 of Iddan et al.

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Claims 26-27: Iddan et al disclose in claim 15 where a swallowable capsule includes an optical window and a system where at least one imager and optical system with optical path for imaging within a body lumen.

Claims 29-39: Iddan et al disclose in claims 50-55 where a method for wide field imaging of body lumen includes the steps of imaging from within the body lumen from multiple optical paths. Iddan et al does not specifically disclose in the claims the method of introducing the device into the body, however, it is inherent as disclosed in apparatus claim where the device is inserted into the body by swallowing the capsule device.

Claims 40 and 48: Iddan et al disclose in claims 36 and 48 where a device includes in vivo imaging with transmitter operable with a system including at least one imaging and an optical system having optical paths for imaging. The limitations of claims 41-47, 49, and 50 in current application are disclosed in claims 37-47 and 49 in Iddan et al.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 5, 6, 11-14, 23-31, and 36-39 are rejected under 35 U.S.C. 102(e) as being anticipated by *Gazdzinski* (US 2002/0103417).

Gazdzinski anticipates all claimed invention in claims 1, 5, 6, 11-14, 23-31, and 36-39.

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Claims 1, 12, 24, 25, 28-30, and 36-39: Gazdzinski discloses an endoscopic probe system and a method for imaging wide field of body lumen by introducing the probe inside a body where the imaging system consists of at least one image and optical system having a multiple optical paths for imaging the surroundings of the body lumen. The device is designed to be swallowed or to be placed in the body via endoscope and detachment thereafter. The device moves along the digestive tract including gastrointestinal tract for inspection (paragraph 0014).

Claims 5, 6, 14, and 31: Gazdzinski further discloses of digital signal processor (DSP) to process the image data obtained from the system described above. The DSP is coupled with memory device to stored the data and which me transferred via transmit circuit (paragraph 0015).

Claims 11, 13, 23, 26, and 27: Gazdzinski discloses that the imager images the intestinal tract via optical window. Furthermore, the device may include two separate partitioned window (paragraph 0046).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-4, 7-10, 15-22, and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Gazdzinski* as applied to claims 1, 12, and 29 above, and further in view of *Alfano et al* (US 6,240,312).

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Gazdzinski substantially discloses all claimed features in claims 2-4, 7-10, 15-22, and 32-35. Gazdzinski does disclose transferring the data obtained from the device described above however, does not explicitly disclose the device and method to transfer the data. In Alfano et al, a device and method similar to Gazdzinski's above where the image data obtained from the capsule is transfer to control system remotely by transmitting the data signal (figures 2-5; col. 2, lines 19-38; col. 4, lines 26-64). Therefore, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to apply Alfano et al's transmit and receive system and method to improve the suggestion implied by Gazdzinski to transfer the data obtained from the image capsule.

7. Claims 40-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Gazdzinski* in view of *Alfano et al* (US 6,240,312).

Gazdzinski substantially discloses all claimed features in claims 40-50. Gazdzinski discloses an endoscopic probe system and a method for imaging wide field of body lumen by introducing the probe inside a body where the imaging system consists of at least one image and optical system having a multiple optical paths for imaging the surroundings of the body lumen. The device is designed to be swallowed or to be placed in the body via endoscope and detachment thereafter. The device moves along the digestive tract including gastrointestinal tract for inspection (paragraph 0014). Gazdzinski does disclose transferring the data obtained from the device described above however, does not explicitly disclose the device and method to transfer the data. In Alfano et al, a device and method similar to Gazdzinski's above where the image data obtained from the capsule is transfer to control system remotely by transmitting the data signal. The control system includes receiver to receiver the transmitted signal at 15 MHz

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(figures 2-5; col. 2, lines 19-38; col. 4, lines 26-64; col. 5, line 66 – col. 6, line 12). However, the frequency of the transmission in this case is design choice, therefore, claimed limitation of 200-500 MHz is obvious. Therefore, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to apply Alfano et al's transmit and receive system and method to improve the suggestion implied by Gazdzinski to transfer the data obtained from the image capsule.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Marshall (US 6,800,060), *Kovacs et al* (US 5,833,603), *D'Andrea et al* (US 5,395,366), and *Lesho et al* (US 4,844,076).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Jung, Ph.D. whose telephone number is 703-605-4364. The examiner can normally be reached on Mon-Fri 8:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WJ
October 13, 2004


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